

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM R. McVAY,	§
	§ No. 528, 2010
Petitioner Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
DEPARTMENT OF ELECTIONS	§ C.A. No. K10M-07-009
FOR KENT COUNTY and JOYCE	§
L. WRIGHT, as Director,	§
	§
Respondents Below-	§
Appellees.	§

Submitted: October 14, 2010

Decided: October 22, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 22<sup>nd</sup> day of October 2010, upon consideration of the motion to dismiss of the defendants-appellees, the Department of Elections for Kent County and Joyce L. Wright (the “Department”),<sup>1</sup> and the record below,<sup>2</sup> it appears to the Court that:

(1) This is an appeal from the Superior Court’s July 20, 2010 order dismissing McVay’s petition for a writ of mandamus. For the reasons that

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<sup>1</sup> Intervenors, the Republican Party of the State of Delaware and the Democratic Party of the State of Delaware, join in the Department’s motion to dismiss.

<sup>2</sup> The plaintiff-appellant, William R. McVay, did not file a response to the motion to dismiss.

follow, we conclude that the Department's motion to dismiss McVay's appeal must be granted.

(2) The record before us reflects that, on June 30, 2010, McVay accepted the nomination of the Libertarian Party to be the Libertarian candidate for the office of State Representative for Delaware's 32<sup>nd</sup> Representative District. On or about July 6, 2010, McVay filed Notifications of Candidacy to be the candidate for that office on behalf of both the Republican and Democratic parties. By letter dated July 15, 2010, the Department rejected those Notifications of Candidacy.

(3) McVay then sought a temporary restraining order in the Court of Chancery to compel the Department to place his name on the primary ballot as a candidate on behalf of the Republican and Democratic parties as well as the Libertarian party. The Court of Chancery dismissed his suit on July 15, 2010 on jurisdictional grounds.

(4) On July 16, 2010, McVay filed a petition for a writ of mandamus in the Superior Court seeking to have the Superior Court compel the Department to place his name on the primary ballot as a candidate on behalf of the Republican and Democratic parties as well as the Libertarian party. On July 20, 2010, the Superior Court dismissed his petition, resulting in the instant appeal.

(5) The primary election in Delaware was held on September 14, 2010 and the results of that election were certified on September 16, 2010. While McVay could have filed an appeal from the Superior Court's July 20, 2010 order on that date, approximately 8 weeks prior to the primary election, he chose not to file the appeal until August 19, 2010. Nor did McVay request expedited review of his appeal.

(6) Because the primary election has already been held and the results certified, McVay's appeal is now moot. As such, the Court lacks jurisdiction to rule on his appeal.<sup>3</sup> We, therefore, conclude that the Department's motion to dismiss McVay's appeal must be granted.

NOW, THEREFORE, IT IS ORDERED that the Department's motion to dismiss is GRANTED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>3</sup> *Glazer v. Pasternak*, 693 A.2d 319, 320 (Del. 1997). We also conclude that this appeal does not fall within the exception to the mootness doctrine for cases involving the public interest that are capable of repetition yet evading review. *Radulski v. Del. State Hosp.*, 541 A.2d 562, 566 (Del. 1988).